

(1957) 11 KAR CK 0007

In the Karnataka High Court

Case No : Writ Petition No's. 134 and 135 of 1955

M. Parmanand and Another

APPELLANT

Vs

Additional Income Tax Officer, Bangalore

RESPONDENT

Date of Decision : 06-11-1957

Acts Referred:

Constitution of India, 1950 — Article 14
Income Tax Act, 1922 — Section 23 (3), 35

Citation : AIR 1958 Kar 70 : (1958) 36 MysLJ 199

Hon'ble Judges : S.R. Das Gupta, C.J.; A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : G.S. Ullal, for the Appellant; D.M. Chandrasekhar, for A.G., for the Respondent

Judgement

S.R. Das Gupta, C.J.—There is only one point raised in these two petitions and it arises in this way. The Petitioner in W. P. No. 134 of 55 is the son and the petitioner in W. P. No. 135 of 55 is his father. Both of them were partners in a firm known as "Chandiram Brothers" dealing in Silk goods at Bangalore. The son was assessed on 31-3-1954 and the father was assessed on 30-12-1954, in respect of their income for the assessment year 1950-51. In the order of assessment, which was made u/s 23 (3) of the Indian Income Tax Act, it was stated that the assessment was made subject to revision u/s 35 of the Income Tax Act on determination of the correct share of income in the firms accounts.

Thereafter on 29th March 1955 the firm was assessed, and the total income assessed was Rs. 93,461/-. On such assessment it was found that the previous assessments of the petitioners were less than what they should have been, and thereupon the Income Tax Officer, purporting to act u/s 19 of the Indian Income Tax (Amendment) Act, 1953 gave notices to the petitioners asking them to appear before him, to show cause as to why the mistakes made in the assessment order already made should not be rectified. The Income Tax Officer did rectify the mistake on 23-8-1955. The present petitions have been filed

challenging the jurisdiction of the Income tax officer to make the said rectifications.

2. It would be necessary at this stage to set out the relevant provisions of the Indian Income Tax Act. Section 35 of the Indian Income Tax Act as it originally stood and which empowered the Income Tax authorities to correct mistakes which were apparent on the face of it inter alia provided as follows:--

"The Commissioner or appellate Assistant Commissioner may, at any time within four years from the date of any order passed by him in appeal or, in the case of the Commissioner in revision u/s 33-A and the Income Tax Officer may, at any time within four years from the date of any assessment order or refund order passed by him on his own motion rectify any mistake apparent from the record of the appeal revision assessment or refund as the case may be, and shall within the like period rectify any such mistake which has been brought to his notice by an assessee."

3. Section 19 of the Indian Income Tax (Amendment) Act (Act XXV) of 1953 which came into force on 1st April 1952, inter alia provided as follows :--

"In Section 35 of the principal Act, after Sub-section (4), the following sub-section shall be inserted, namely:--

(5) Where in respect of any completed assessment of a partner in a firm it is found on the assessment or re-assessment of the firm or on any reduction or enhancement made in the income of the firm u/s 31, Section 33, Section 33-A, Section 33-B, Section 66 or Section 66-A that the share of the partner in the profit or loss of the firm has not been included in the assessment of the partner or, if included, is not correct, the inclusion of the share in the assessment or the correction thereof, as the case may be, shall be deemed to be a rectification of a mistake apparent from the record within the meaning of this section and the provisions of Sub-section (1) shall apply thereto accordingly, the period of four years referred to in that sub-section being computed from the date of the final order passed in the case of the firm."

4. Thus Section 19 of the amending Act introduced a further provision to Section 35 of the principal Act. The Income tax Officer purported to act under this section. The contention of the petitioners before us is that the Income Tax Officer had no such power.

5. The grounds on which the said contention was based are two-fold. In the first place, it was argued before us that the power given to the Income Tax Officer to correct mistakes under the said provisions of the amending Act can be exercised only if the assessment year in question was after 1st April 1952. In other words, it was contended that if the assessment year relates to a period prior to 1st April 1952, then the Income Tax Officer has no power to correct the mistakes under the said provisions of the Amending Act. In this case the assessment year was 1950-51.

The Act came into force on 1st April 1952, and that being the position it was contended that the assessment, although it was made after the Act came into force, related to a period prior to the date when the said Act came into force i.e. 1st April, 1952; and in such a case the said provisions of the amending Act would not apply and the income tax authority will have no power to correct the mistakes referred to therein. In support of that contention the learned Advocate for the petitioners relied on the observations made by their Lordships of the Supreme Court in Commissioner of Income Tax, West Bengal Vs. Isthmian Steamship Lines, , namely, that in income tax matters the law to be applied is the law in force in the assessment year unless otherwise stated or implied. It was contended by the learned Advocate for the petitioners that in the Assessment year in question the amending Act was not in force and, therefore, the provisions of the amending Act cannot be applied to the assessment made in respect of that year.

6. Before I deal with this contention of the learned Advocate for the petitioner I should mention that some of the other High Courts took a contrary view on this point. In Bombay Dyeing and Manufacturing Co., Ltd. v. M. K. Venkatachalam, (S) (B), their Lordships of the Bombay High Court came to the conclusion that the test which must be applied for the purpose of application of Section 35 is what was the law when the order of assessment was made. The same view was also taken by the Madras High Court in S.K. Habibullah Vs. The Income Tax Officer, V Circle, Madras and Another, and by the Andhra Pradesh High Court in Lakshminarayana Chetty v. First Additional Income Tax Officer AIR 1957 A.P. 159 (D). In my opinion, the view taken by these High Courts on this point is the correct view to take.

The power given by the provisions of the amending Act to the Income Tax Officer is to correct a mistake in an assessment. If at the time when the order of assessment was made the law gave him power to correct such mistake then he can do so. The question as to what was the year of assessment in respect of which the assessment order is made becomes to my mind immaterial for the purpose of determining Income Tax Officer's power to correct mistake in his assessment. The assessee is bound to disclose all his assets and all his Income and the Income Tax Officer has to make a correct assessment. If the Income tax officer has not included in the said assessment the share of the assessee in certain profit or loss & if at the time when he made the assessment he was vested with the power to include the same at any time within the period mentioned in the Act then he can exercise that power and rectify the mistake irrespective of the question as to the year of assessment.

7. In the Supreme Court case referred to by the learned Advocate for the petitioners, the assessee claimed that the unabsorbed depreciation at the end of the year 1938-39 should be deemed part of the depreciation allowance for the subsequent year, that is, 1939-40, and should be allowed to be further carried forward u/s 10 (2) (vi) of the Income Tax Act, 1922. In the assessment year in

question the assessee had that right and their Lordships of the Supreme Court accepted the said contention of the assessee on the ground that the law to be applied is the law in force in the assessment year unless otherwise stated or implied. As for the proposition that in Income Tax matters the law to be applied is the law in force in the assessment year unless otherwise stated or implied there cannot possibly be any manner of doubt. But the question in this case is somewhat different.

The question in this case is not whether the assessment can be justified, and for that purpose the law to be applied must be the law prevalent at the date of assessment, but the question is whether a mistake in the assessment can be rectified. For that purpose the law to be applied is the law which was in force at the date of assessment. The question as to what was the law in the assessment year becomes irrelevant for the present purpose. In this case the Income tax authorities at the date of assessment had such power and therefore, they could exercise it irrespective of the question as to whether or not in the year of assessment it had such power. The relevant point of time to be taken into consideration for the purpose of deciding this matter is the time when the assessment is made and not the year of assessment. That being so, I am clearly of the opinion that this contention of the learned Advocate for the Petitioners must fail.

8. The second contention urged before us was that the amending Act violates the provisions of Article 14 of the Indian Constitution, in as much as it makes a discrimination for which there is neither an objective test nor a rational relationship to the object to be achieved by the enactment. Shortly put the contention of the learned Advocate for the Petitioners on this point was as follows: By the provisions in question made in the amending Act a discrimination has been made between persons whose assessment have already been completed prior to 1st April 1952 and the persons whose assessments although also of the same year have not been completed before that date. It was urged before us that between two persons, both of whose year of assessment is the same, there is a discrimination based merely on that fact that in the case of one the assessment has already been completed prior to first April 1952 while in the case of the other the assessment has not been completed. This distinction, it was contended in the first instance, has no objective basis, and in the second instance has no rational relationship to the object achieved. The learned Advocate for the petitioners relied on the decision of the Supreme Court reported in *Budhan Choudhry and Others Vs. The State of Bihar*, wherein Mr. Justice S. R. Das (as he then was) observed as follows:

"It is now well established that while Art. 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left

out of the group and (ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question."

With regard to the second condition his Lordship further observed that what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. The learned Advocate for the Petitioner contended before us that neither of these two conditions has been satisfied and therefore, the Act in question offends against the provisions of Art. 14 of the Constitution and should be held to be void. I am unable to accept this contention of the learned Advocate for the Petitioners.

9. In the first place, it seems to me to be clear that there is an objective test which determines the basis of the classification made in the said Act. The objective test is whether or not the assessment of persons in question has already been completed by 1st April, 1952. The classification has been made on that basis and it is quite possible by applying this objective test to determine the class. In my opinion this condition has been fulfilled.

10. Coming to the second condition on which the learned Advocate for the petitioners laid more Emphasis in his arguments before us, it seems to me that the Act in question also satisfies the second condition which has been laid down by their Lordships of the Supreme Court in the case mentioned above. The difference, in my opinion, has a reasonable relationship to the object to be achieved. There is a "nexus" to use the expression of his Lordship between the basis of classification and the object under consideration. In other words, it is not a mere fanciful classification. There is a justifiable reason for the difference which has been made between a person whose assessment has already been completed by the time the Act came into force and the person whose assessment has not been completed. The person whose assessment has been completed is entitled to a sense of security by the fact that it is complete, the Act in question not having come into force at the date when the said assessment was completed. There is thus justifiable reason for exempting such persons from the operation of this Act; but the persons whose assessment has to be made after the Act comes into force cannot claim the same justification for exemptions. It should be noted that the power which has been given to the authority concerned is after all the power to rectify a mistake in the assessment. It is not a power to leave fresh or excess tax, and there is no increase in the taxing liability of the assessee. In my opinion, the difference which has been made between the classes of persons mentioned has a rational relationship to the object which the Act wanted to achieve. In that view of the matter I am of the opinion that the contention of the learned Advocate for the Petitioners must fail on both these grounds.

11. In the result, these two Petitions are dismissed, with costs (Advocate's fee Rs. 250/-).

Somnath Iyer, J.

12. I agree.

13. Petitions dismissed.